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EXAMINER	
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3621	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/719,981	HUG ET AL.	
	Examiner	Art Unit	
	JOSHUA MURDOUGH	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgements

1. This action is responsive to Applicants' remarks and affidavit under 37 C.F.R. §1.131 filed March 27, 2008 ("March 2008 Affidavit").

2. Claims 1-31 are pending and have been examined.

Claim Rejections - 35 USC §112 2nd Paragraph

3. The following is a quotation of the second paragraph of 35 U.S.C. §112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 11 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim recites the limitation, "the allotted playback duration is determined based upon rights intrinsic to the device." One of ordinary skill in the art would not understand what is meant by "intrinsic" used in this manner. Applicant has stated that this term should be given its conventional meaning and provided this definition from the American Heritage Dictionary: "of or relating to the essential nature of a thing; inherent." While the Examiner has no disagreement with this being a conventional meaning, he does not feel this provides any additional insight into what is meant in the context of the claim. There is no showing of intrinsic or inherent rights in the device. It is possible that the device comes programmed with rights which govern the operation, however, there is no evidence to support this. It is also possible that the limitation refers to the capabilities of the device. For example, there is no mention of editing the content,

therefore there is no right to edit intrinsic to the device. As these are clearly different interpretations of what could be intended, Applicant has not clearly and distinctly presented the claim, and thus, the rejection is maintained.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 10-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Medvinsky (2005/0022019).

7. As to claim 1, Medvinsky shows: In a client device, a method comprising:

a. receiving a request for playback of digital audio or video content stored on the device (Figure 4, 305 & Paragraph 0054; the decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.);

b. determining an allotted playback duration for the device (Figure 4, 304);

c. determining an elapsed playback duration for the device, the elapsed playback duration representing an amount of time previously consumed by the device while

rendering digital audio or video content (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit);

d. determining whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is satisfied (Figure 4, 306); and

e. regulating playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is determined to be satisfied (Figure 4, 300).

8. As to claim 2, Medvinsky further shows:

f. the request for playback of digital audio or video content is received via a user input device (Paragraph 0030, set-top box which allows for user input).

9. As to claim 3, Medvinsky further shows:

g. determining an elapsed playback duration for the device further comprises: determining a current elapsed playback duration for the device; determining a rendering time representing an amount of time it takes for the digital audio or video content to be rendered by the client device; and adding the rendering time to the current elapsed playback duration to obtain a new elapsed playback duration (Figure 4, 305-307; If the "play time" in 306 were not updated in this manner, there would be an infinite loop created by these steps.).

10. As to claim 4, Medvinsky further shows:

h. playback of the requested digital audio or video content track is denied if it is determined that the relationship between the allotted playback duration and elapsed playback duration is satisfied (Figure 4, 305-307; where the "part" 307 is understood to be a track).

11. As to claim 5, Medvinsky further shows:

i. facilitating playback of the digital audio content if it is determined that the elapsed playback duration does not exceed the allotted playback duration (Figure 4, 305-307; decryption facilitates the playback).

12. As to claim 10, Medvinsky further shows:

j. denying playback of additional digital audio or video content stored on the device in addition to the requested digital audio or video content if it is determined that the elapsed playback duration is equal to or exceeds the allotted playback duration (Figure 4, 306 & 314).

13. As to claim 11, Medvinsky further shows:

k. the allotted playback duration is determined based upon rights intrinsic to the device (Paragraph 0038).

14. As to claim 12, Medvinsky further shows:

l. the allotted playback duration is determined based upon data received from the content rights server (Paragraph 0050).

15. As to claim 13, Medvinsky further shows:

m. periodically increasing the allotted playback duration prior to the allotted playback duration exceeding the elapsed playback duration (Paragraph 0042, As shown in the reference, the time is updated periodically with examples of 5 and 15 minutes given.).

16. As to claim 14, Medvinsky further shows:

n. the allotted playback duration is increased based upon entitlements granted to the user by a service provider (Figure 4, 310-312, Multiple plays are allowed by the provider, and the effective playback duration is extended for each play used.) .

17. As to claim 15, Medvinsky shows: In a digital content rendering device, a method comprising:

o. rendering one of a plurality of audio or video content items (Paragraph 0015);

p. determining an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit); and

q. regulating further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration (Figure 4, 300).

18. As to claim 16, Medvinsky further shows:

r. the elapsed playback duration represents by an amount of time for which content has been rendered by the digital content rendering device (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit).

19. As to claim 17, Medvinsky further shows:

s. the elapsed playback duration represents a quantity of data processed by the digital content rendering device to render content on the device (Paragraph 0058).

20. As to claim 18, Medvinsky further shows:

t. regulating comprises denying further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to the allotted playback duration (Figure 4, 314).

21. As to claim 19, Medvinsky further shows:

u. the allotted playback duration represents at least one of an amount of render time for which content may be rendered on the digital content rendering device, and a quantity

of data that may be processed by the digital content rendering device to render content on the device (There is inherently a relationship between the playback duration and the quantity of data processed, known as bit rate, and therefore, the time of the playback represents the data processed.).

22. As to claim 20, Medvinsky further shows:

v. facilitating playback of the digital audio content if it is determined that the elapsed playback duration does not exceed the amount of render time corresponding to allotted playback right (Figure 4, 300).

23. As to claim 21, Medvinsky further shows:

w. regulating further content rendering comprises facilitating content rendering at a reduced level of functionality or quality if the elapsed playback duration satisfies a predetermined relationship with respect to the allotted playback right (Paragraph 0060).

24. As to claim 22, Medvinsky shows: In a digital content rendering device, a method comprising:

x. identifying a playback right associated with the digital content rendering device representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering device (Figure 4, 304);

y. determining whether the allotted measure of content has been rendered by the device (Figure 4, 306); and

z. preventing further content rendering on the digital content rendering device if it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).

25. As to claim 23, Medvinsky further shows:

aa. the allotted measure of digital audio or video content that may be rendered represents an amount of time that the digital content rendering device may render the digital audio or video content (Paragraph 0014).

26. As to claim 24, Medvinsky further shows:

bb. the playback right associated with the digital content rendering device is further associated with a user, (Paragraph 0014); and

cc. wherein the user is denied playback of any additional content items by the digital content rendering device once it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).

27. As to claim 25, Medvinsky further shows:

dd. the playback right is determined based upon a subscription agreement between the user and a content provider (Paragraph 0041, A subscriber is mentioned, and in order to be a subscriber there has to be some agreement with the provider.).

28. As to claim 26, Medvinsky shows: A digital content rendering apparatus comprising:

ee. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the apparatus to receive a request for playback of digital audio or video content stored on the apparatus (Figure 4, 305 & Paragraph 0054; the decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.),

ff. determine an allotted playback duration for the apparatus (Figure 4, 304);

gg. determine an elapsed playback duration for the apparatus, the elapsed playback duration representing an amount of time previously consumed by the apparatus while rendering digital audio or video content (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit);

hh. determine whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the apparatus is satisfied (Figure 4, 306);

ii. regulate playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the apparatus is determined to be satisfied (Figure 4, 300); and

jj. at least one processor coupled with the storage medium to execute the programming instructions (Paragraphs 0068-0069).

29. As to claim 27, Medvinsky shows: A digital content rendering apparatus comprising:

kk. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the apparatus to render one of a plurality of audio or video content items (Paragraph 0015);

ll. determine an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit); and

mm. regulate further content rendering by the digital content rendering apparatus if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration; and at least one processor coupled with the storage medium to execute the programming instructions (Figure 4, 300).

30. As to claim 28, Medvinsky shows: A digital content rendering apparatus comprising:

nn. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the digital content rendering apparatus to identify a playback right associated with the digital content rendering apparatus representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering apparatus (Figure 4, 304);

oo. determine whether the allotted measure of content has been rendered by the apparatus,(Figure 4, 306);

pp. prevent further content rendering on the digital content rendering apparatus if it is determined that the allotted measure of digital audio or video content that may be

rendered by the digital content rendering apparatus has previously been rendered by the apparatus (Figure 4, 300); and

qq. at least one processor coupled with the storage medium to execute the programming instructions (Paragraphs 0068-0069).

31. As to claim 29, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

rr. receiving a request for playback of digital audio or video content stored on the device (Figure 4, 305 & Paragraph 0054; the decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.);

ss. determining an allotted playback duration for the device (Figure 4, 304);

tt. determining an elapsed playback duration for the device, the elapsed playback duration representing an amount of time previously consumed by the device while rendering digital audio or video content (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit);

uu. determining whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is satisfied (Figure 4, 306); and

vv. regulating playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is determined to be satisfied (Figure 4, 300).

32. As to claim 30, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

ww. rendering one of a plurality of audio or video content items (Paragraph 0015);

xx. determining an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit); and

yy. regulating further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration (Figure 4, 300) .

33. As to claim 31, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

zz. identifying a playback right associated with the digital content rendering device representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering device (Figure 4, 304);

aaa. determining whether the allotted measure of content has been rendered by the device (Figure 4, 306); and

bbb. preventing further content rendering on the digital content rendering device if it is determined that the allotted measure of digital audio or video content that may be

rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).

Claim Rejections - 35 USC §103

34. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

35. Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky in view of Belknap (5,586,264).

36. As to claims 6 and 7, Medvinsky shows as discussed above. Medvinsky does not directly disclose the displaying of control values to the user.

37. Belknap teaches the elapsed playback duration (Column 20, lines 6-7) and the allotted playback duration (Column 20, line 15) being shown to the user. It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky to include the displaying of this information for the purpose of allowing the user to make informed decisions during the playback in regards to the use of the remainder of the allotted time.

38. As to claim 8, Medvinsky further shows:

ccc. the digital audio or video content is encoded in accordance with at least one of an advanced audio encoding algorithm, an adaptive multi-rate encoding algorithm and an MP3 encoding algorithm (Paragraph 0012, MPEG-4 is and adaptive multi-rate encoding algorithm.).

39. Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky in view of Blonder (5,708,422). Medvinsky discloses as discussed above. Medvinsky does not disclose: denying playback of the requested digital audio or video content if the elapsed playback duration added to a run length associated with the requested content exceeds the allotted playback duration.

40. Blonder teaches a credit account where an additional charge is not allowed if it would cause the account to go over its limit (Column 12, lines 18-21). There is a strong correlation to the instant application. The time is paid for and creates a limit. As the time is used, the balance increases until it reaches the limit. Any transactions, additional viewing, that would cause the balance, elapsed time, to exceed the limit, allowed time, are therefore denied. It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky to include a transaction system as described by Blonder in order to prevent the usage of contents beyond the rights issued, which corresponds to not exceeding the limit (Blonder, Column 12, lines 18-21).

Response to Arguments

41. Applicants' arguments filed 27 March 2008 have been fully considered but they are not persuasive.

42. Applicants' arguments in regards to the 35 USC §112 2nd paragraph rejection on page 9 of their response have been addressed above, with the rejection, where the Examiner has elaborated on the reasoning.

43. Applicants' argue that the March 2008 Affidavit removes the Medvinsky reference.

44. The Examiner respectfully disagrees. The March 2008 Affidavit has been considered but is ineffective to overcome the Medvinsky reference for the following reasons:

45. In order to receive benefit of an earlier date though the filing of a 131 Affidavit, one of two things needs to be supported by the evidence provided:

ddd. The conception and reduction to practice (constructive or actual) occurred prior to the date of the reference. Typically, the constructive reduction to practice is taken to be the filing date of the application. Therefore, evidence of an actual reduction to practice is usually needed to receive the earlier date.

i. The evidence ("March 2008 Evidence") submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Medvinsky reference. As clearly stated in the March 2008 Evidence, at the time of filing of the form, "no code has been created" (Page 1, section 5).

ii. Moreover, points 5 and 7 of Applicant's statement disagree as to when the reduction to practice occurred. In point 5, it is stated that "[t]he subject matter claimed in the subject application was conceived and reduction to practice was diligently pursued prior to the July 5, 2003 filing date of the Medvinsky reference, and such diligent pursuit of reduction to practice continued, without lapse, to the filing date of the subject application." According to this statement, the reduction to practice occurred after the filing date of the Medvinsky reference. However, in point 7, Applicant states "The partially-redacted copy of the Invention Disclosure Form (i.e., Exhibit A) evidences the conception, and reduction to practice, of the subject matter claimed in the subject application prior to the July 5, 2003 filing date of Medvinsky." This statement shows that the reduction to practice occurs prior to the filing data of Medvinsky.

eee. The conception occurred prior to the reference date and diligence can be shown by the evidence from a date before the reference date through to the reduction to practice. Generally, logs or other dated records of the efforts to achieve the reduction to practice are needed to show diligence.

iii. The evidence submitted ("March 2008 Evidence") is insufficient to establish diligence from a date prior to the date of reduction to practice of the Medvinsky reference to either a constructive reduction to practice or an actual reduction to practice. As the dates on the invention disclosure form (Pages 1-2 of the March 2008 Evidence, "form") were redacted and it was the only piece of evidence provided, it is impossible to determine diligence. The unknown date of

the March 2008 Evidence could have been years prior to the reduction to practice. After completing the form, it is clearly possible that no steps were taken toward reducing the idea to practice for a prolonged period as there is no evidence to the contrary.

46. Furthermore, MPEP 715.04 states that an affidavit must be made by "[a]ll of the inventors of the subject matter claimed" and that an affidavit by only "one of two joint inventors is accepted where it is shown that one of the joint inventors is the sole inventor of the claim or claims under rejection." As the March 2008 Affidavit was made by only Bradley D. Hefta-Gaub who is "a joint inventor of the subject application (filed on November 21, 2003) and all claims contained therein," (Page 1, paragraph 1) clearly it is not the latter case.

47. The Examiner also notes that in the March 2008 Evidence, on page 2, that there is a location for a supervisor's signature and a date that has been left blank, and not redacted. Further, on page 2, the form also states "Attach a description of the invention to this form, DATED AND SIGNED BY AT LEAST ONE PERSON WHO IS NOT A NAMED INVENTOR." (emphasis in original) Pages 3-5 of the March 2008 Evidence clearly contain the description required by page 2, but again lack the signature and date.

48. For all the reasons above, the March 2008 Affidavit is deemed ineffective and thus, the rejections under 35 USC 102 and 103 from the previous Office Action, dated 27 September 2007, are maintained.

Conclusion

49. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

50. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

51. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The Examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m.

52. If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

53. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

J. M.
Examiner, Art Unit 3621

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621